

B

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548

FILE: B-187355

DATE: September 23, 1976

MATTER OF: McCarthy-Farrell Construction Company

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97977

DIGEST:

1. Bidder's small business size status is for determination by SBA, and ASPR provides that where 30 working days have elapsed without ruling by SBA Size Appeals Board, contracting agency is to presume that SBA District Director's determination that bidder is small business has been sustained. Therefore, award during pendency of appeal, but more than 30 days after receipt of case in District office, was proper.
2. Alleged nonresponsiveness of bid is untimely issue where protest is filed with GAO more than 9 weeks after bid opening.

McCarthy-Farrell Construction Corporation (MFC), protests an award to Kokosing Construction Company under invitation for bids No. DACA 31-76-B-0057, a 100-percent small business set-aside, issued by the U.S. Army Corps of Engineers. MFC alleges that Kokosing's bid was nonresponsive, that Kokosing is a large business and that the Army violated ASPR § 1-703(b)(3) (1975 ed.) in making the award while its appeal regarding Kokosing's small business size status was pending before the Small Business Administration's (SBA) Size Appeals Board.

Our Office does not consider protests involving a bidder's size status since SBA is authorized to make such determinations. Tate Engineering, Inc., B-186788, July 23, 1976, 76-2 CPD 76.

ASPR § 1-703(b)(3), supra, provides in part that where an appeal of an SBA District Director's size determination is made, the contracting agency shall allow a total of 30 working days for receipt of the SBA size determination. If no ruling is received within this time, it is presumed that the District Director's size determination has been sustained. The 30 days is counted from the time of initial receipt of the case in the SBA District Office--in this case, on June 24, 1976, or shortly thereafter. It appears, therefore, that 30 working days had expired at the time the Army awarded the contract on August 16, 1976.

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Moreover, any other grounds for MFC's belief that Kokosing's bid was nonresponsive should have been apparent to the protester after bids were opened on June 24, 1976. Since MFC's protest was filed with our Office on September 2, 1976, the nonresponsiveness issue is untimely under our Bid Protest Procedures, 4 C.F.R. § 20 (1976).

The protest is denied.

R. Z. K. 114
Deputy Comptroller General
of the United States